

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4485 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

NARESHCHANDRA PRAHLADBHAI MODI

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioner
MR KG SHETH AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/07/2000

ORAL JUDGEMENT

The petitioner has filed this petition under the provisions of Articles 14, 300 and 226 of the Constitution of India read with provisions contained in the Bombay Land Revenue Code and Indian Registration Act

and against the order dated 25th June, 1991 passed by respondent no. 2 for recovery of Rs.25,923-44 Ps.

2. The petitioner abovenamed claims that father of the petitioner was the owner of agricultural land bearing Survey Nos. 724/2, 724/3, 724/4, and 724/5. The total area of the said land is reported to be 91,299 sq.mts. The petitioner says that the father of the petitioner -Prahladbhai Kuberbhai expired in the year 1987.

3. He then claims that out of the aforesaid four pieces of lands, land bearing Survey No. 724/2 was sold under an agreement to one Hirabhai Chhaganbhai way back in the year 1967 and possession thereof was also transferred in favour of the said purchaser. That thereafter, the said Hirabhai Chhaganbhai has disposed of the said land in favour of one Harikrushna Jagdishprasad Shukla in or about 1979. That the said Shri Shukla has constructed a building known as "Sanket Hindi High School". He then claims that another land bearing Survey No. 725/2 has been sold by registered sale deed dated 24th March, 1969 to a group of five persons namely (1) Rabari Sagarbhai Raibhanbhai; (2) Rabari Budhnathbhai Bhagwanbhai; (3) Rabari Jethabhai Mashrubhai; (4) Rabari Bijalbhai Becharbhai; and (5) Rabari Saratanbhai Hirabhai. The petitioner also says that the land bearing Survey No. 724/3 has been sold under an agreement dated 21st January, 1971 in favour of Rughnath Mandal, Malji Gova, Mahesh Saratan and Chuda Kurshi, and the purchasers of the said land are in possession thereof since 1971.

4. The petitioner also states that Survey Nos. 725/1 and 725/3 have been sold by a registered sale deed dated 12th June, 1969 to one Kalyan Kama Rabari. It is also contended by the petitioner that another part of land bearing Survey No. 725/3 has been sold by a registered sale deed dated 28th July, 1961 in favour of Harjibhai Ramjibhai Rabari and others. That Survey Nos. 725/4 and 725/3 have been disposed of in favour of Rabari Kalyanbhai and others under sale deed dated 25th March, 1969.

5. The District Development Officer found that Sanket Hindi High School was constructed illegally in the agricultural land, and therefore, an order was passed that the building should be demolished and time was given to demolish the said Hindi High School, and further order was passed to restore the original position of the land which was an agricultural land. He also passed further orders to the effect that aforesaid land be subjected to assessment of non-agricultural use together with the

additional local funds and education cess. The said order has been placed at Annexure : A to this petition.

6. Being aggrieved by the said order, the Administrator -Shri Harikrushna Jagadishprasad Shukla of Sanket Hindi High School preferred revision application before Special Secretary, Revenue Department (Appeals), State of Gujarat and by order dated 3rd February, 1987, said revision application was partly allowed and the order passed by the District Development Officer for demolishing the said building was set aside, and it was further ordered that the said school building be not demolished. The Special Secretary has confirmed the order about N.A. assessment, recovery of local funds and education cess. For non-agricultural use, the District Development Officer has to give a decision, for how many years the agricultural land was put to N.A. use, and after deciding the said issue, recovery will be required to be effected. The said order has been placed at Annexure : B to this petition.

7. The petitioner however claims that without going through the process as directed in the aforesaid order dated 3rd February, 1987, the respondents directed recovery of the aforesaid amount of Rs. 25,923-44 Ps. under demand notice dated 25th June, 1991 which is placed at Annexure : D to this petition. The petitioner claims that the aforesaid demand notice is illegal and it has been issued without giving any opportunity to the petitioner of being heard. The petitioner also claims that at earlier point of time, the petitioner was not the owner of the said property, nor he was in possession thereof. The change of user was not effected by him, and therefore, he was not liable to pay penalty for N.A. use or any other amount to the respondents on the strength of the said action or on account of user of the said land for N.A. purpose. That, the aforesaid action for issuing aforesaid demand notice dated 25th June, 1991 placed at Annexure : D to this petition is illegal, unauthorised and without jurisdiction. The petitioner, therefore, prays in this petition for issuance of appropriate writ, order or direction for quashing and setting aside the aforesaid impugned notice dated 25th June, 1991 and for holding the same to be illegal and void and to declare that the petitioner is not liable to pay any assessment or any other local funds as indicated in the said notice.

8. On presentation of this writ petition, rule was issued and ad-interim relief was also granted which was continued from time to time. Despite service of notice

of rule, the respondents have not filed any document or affidavit in support of their case and to defend the present petition.

9. I have heard Mr. M.B.Gandhi, the learned advocate for the petitioner and Mr.K.G.Sheth, learned AGP for the respondents. I have also perused the papers.

10. During the course of hearing, it has come out that apart from anything else, it is very clear that Secretary, Revenue Department (Appeals), Government of Gujarat has passed an order dated 3rd February, 1987 on Page 21, wherein it has been made clear that the subordinate officer shall undertake an inquiry as to what is the position of the land in question and who has used the agricultural land for N.A. purpose, and thereafter, unauthorised occupant should be summarily evicted and appropriate penalty should be imposed in accordance with Rule 101 of the Bombay Land Revenue Code. Therefore, a clear direction was given for holding an inquiry in the aforesaid aspects of the case. Nowhere on record, it appears that the petitioner was held responsible to pay the assessment on the strength of the said inquiry. The petitioner has positively stated in the petition as well as in the affidavit that no such inquiry was conducted before issuance of the aforesaid notice dated 25th June, 1991. it is, therefore, clear that the demand notice dated 25th June, 1991 Annexure : D has been issued by the respondent without any inquiry and without affording any opportunity of hearing to the petitioner. Therefore, the demand notice which has been issued is clearly in violation of principles of natural justice. Therefore, said notice cannot be upheld and cannot be sustained in the eye of law.

11. Normal aspect of the case of the petitioner is that the petitioner has contended right from the beginning that his father had disposed of the said property long back, then we can find the document at Annexure : C dated 22nd April, 1991. It is a letter addressed by the petitioner to the City Mamlatdar stating that the aforesaid property has been sold by his father and the list of events as to the disposal of the said property is annexed along with the said letter. This may make it clear that the respondents were aware about aforesaid case of the petitioner that aforesaid four lands have been sold long back by the father of the petitioner to different persons. The details of those transactions can be gathered from Page 25. It says that aforesaid documents have been registered at different point of time running between 1969 and 1979. This

document makes it clear that during the aforesaid passage of time, all the four lands have been disposed of by the father of the petitioner and different names of the persons who had purchased the properties have also been indicated in the said list on Page 25.

12. In the aforesaid view of the matter, respondents were required to inquire from those persons as to whether the fact was true and as to whether those persons had really purchased the land from the father of the petitioner and as to who had made construction in the aforesaid agricultural land for using the same for N.A. purpose. The respondents could have inquired as to whether the said school was constructed by the person named in the petition or not. The respondents have not undertaken any such process or made any such inquiry before passing the order for recovery of the aforesaid amount. It is, therefore, clear that the aforesaid order for recovery of the aforesaid amount has been passed and demand notice has been issued without following due process of law and without giving a reasonable opportunity of being heard to the petitioner. It is more so when the petitioner had, time and again taken such contention before the respondents that his father had already disposed of the properties and possession thereof had also been transferred long back.

13. Under the aforesaid circumstances of the case, it is apparently clear that the demand and demand notice both are illegal and against the principles of natural justice. In the premise, said demand notice cannot stand in the eye of law and it is, therefore, required to be struck down. However the doors for the respondents would not be totally closed down. The order dated 3rd February, 1987 by itself is clear and it will be open to the respondents to make inquiry in accordance with the order dated 3rd February, 1987 and ultimately, if it is found that a particular person is guilty of misconduct in accordance with the directions and findings of that order, then after following due process of law the respondents can take steps in accordance with the orders dated 3rd February, 1987. Therefore, the interest of respondents can also be put to safeguard.

14. With the aforesaid discussions, I am of the view that the aforesaid demand notice is illegal and requires to be quashed and set aside, and for that purpose, the petition will have to be partly allowed and it is partly allowed accordingly. The impugned notice of demand dated 25th June, 1991 Annexure : D is quashed and set aside, being illegal and void and respondents are prevented from

implementing aforesaid demand notice dated 25th June, 1991 at Annexure : D against the present petitioner. Rule made absolute to the aforesaid extent, with no order as to costs.

15. As aforesaid, it would be open to the respondents to take appropriate action in accordance with the directions issued in the order dated 3rd February, 1987 at Annexure : B after following due process of law.

Date: 7/7/2000. (D.P.BUCH, J.)

ccshah